vocable power to vote the stock cannot be given and that the agreement is good though revocable. Though the language used is broad enough to cover cases of an active trust, yet the facts of these cases show only a duty to vote as directed and passively hold the stock. Thus the rule is the same as that laid down by Boyer v. Nesbitt.[12] A few cases admit the right of a transferee of the certificates to have the agreement invalidated.[13] In these cases also the trustees had no active duties. As to what constitutes an active trust opinions vary. We have seen the Pennsylvania theory. In the association the mere duty of voting has been held to make the trust an active one irrespective of any duties of management.[14] It would seem in such cases that ordinary principles of contract law should govern, and we are in sympathy with a decision holding that a pledge of personal credit and financial responsibility to raise funds to support the enterprise is valid consideration. It has been held that where the only consideration is the mutual promise of the stockholders any member may revoke at will. It is difficult to reconcile this with general contract law, yet to hold otherwise would make every voting trust valid, as there is in every case at least this much consideration. It seems, moreover, that although this is not the express ground of our principal case, it is at least a result of it.

Only two points in regard to the law of voting trusts may be said to be generally admitted. Where the object of the trust is illegal *per se*, as for example to procure some undue advantage for the majority over the minority, it will be set aside.[16] Where the voting trust results from an agreement between stockholders and creditors preserving the lien of the latter, and serving to keep the corporation off the rocks of bankruptcy, it will generally be upheld.[17] It would seem that such contracts are within a very essential policy and in all respects made upon a valid consideration.

C. H. S., Jr.

INJUNCTION—RIGHT TO RESTRAIN THE SALE OF LETTERS.—Several phases of the question of property in letters were dealt with in a recent case.[1] The executor of Mrs. Eddy, of Christian Science

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[12] Boyer v. Nesbitt (*supra*, note 2).

[13] White v. Thomas Tire Co., 52 N. J. Eq. 178 (1894); Clowes v. Willes, 60 N. J. Eq. 179 (1900).

[14] Note 7, *supra*.

[15] Smith v. San Francisco Ry.. 115 Cal.. at p. 603 (1897).

[16] Kreissl v. Distilling Co., 61 N. J. Eq. 5 (1901); Shepany Voting Trust Cases, 60 Conn. 553 (1893); Hafer v. N. Y. Co., 9 Ohio, Dec. Reprints, 470 (1899); Com. v. Russell, 48 N. J. Eq. 208 (1891); Fennesy v. Ross, 5 App. Div. N. Y. 342 (1896).

[17] Shelmerdine v. Welch, 8 C. C. (Pa.) 330 (1890); Mobile Ry. v. Nicolas, 98 Ala. 92 (1893).

[1] Baker v. Libbie, 97 N. F. 109 (Mass. 1912).

fame, brought a bill to restrain an auctioneer of manuscripts from publishing and selling certain autograph letters of his testatrix. They possessed no literary merit, but were merely friendly letters written to a cousin about the commonplaces of life. The two requests in the bill thus raised the question of the existence and the extent of the proprietary right of the writer of private letters, having no literary value.

There is no doubt that this right does exist. While in the earliest cases the letters did possess literary value,[2] yet the right now covers all letters, whether of literary value or not.[3] The literary value may increase their market value, but does not create the property right in the writer. Certain it is that this right gives to the writer not only the right of publication, but also the negative right of restraining their publication by the correspondent or any third party. And the authorities are agreed in granting injunctions to restrain such unlawful publication,[4] in the absence of any special circumstances showing a different relation between the parties than that presented in the normal case.[5] This conclusion, as pointed out by the court, is supported not only by the authorities but by reason as well. For every man is entitled to the fruits of his labor, whether physical or mental, and the substance of the letters is the result of some mental effort, no matter how small. The defendant was, therefore, restrained from publishing the letters.

The court went further, and said that, connected with this intangible right, is the right to copy or secure copies of the letters within a reasonable time, saying: "Otherwise the author's right of publication may be lost." Though there seems to be no authority for this proposition (nor is there any against it), this is probably not going too far, as it does not appear that this detracts from whatever right of property the recipient may have in the paper on which the letter is written.

There still remains, however, the question as to whether the author's rights, positive and negative, are limited to publication, or whether they permit him also to prevent a transfer of the letters by the recipient. The question is a difficult one, because of the small number of cases on the point. The case of Pope v. Curl,[6] suggests that "it is only a special property in the receiver, possibly the prop-

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[2] Pope v. Curl, 2 Atk. 341 (1741)). Here the letters were written by Alexander Pope. In Thompson v. Stanhope, 12 Ambler, 737 (1774), the letters involved were Lord Chesterfield's famous letters to his son.

[3] Gee v. Pritchard, 2 Swanston, 402 (1818); Folsom v. Marsh, 2 Story, 100 (U. S. C. C. 1842).

[4] There is a valuable collection of authorities in the opinion of our principal case.

[5] As an instance of these the court cites the case of letters by an agent to or for his principal and others, where the conditions indicate that this property in the form or expression is in another than the writer.

[6] *Supra.*

erty of the paper may belong to him." This would seem to allow alienability. The case of Oliver v. Oliver [7] decided that the recipient of a letter has sufficient property in the paper upon which it is written to entitle him to maintain detinue for it against the sender into whose hands it has come. But it would be very difficult to imply a right to sell from this decision. The case of Grigsby v. Breckenridge [8] decided that the property of the recipient in the letter implies the right to keep it or destroy it, or to dispose of it in any other way than by publication. This would certainly give him the right to sell. But the case of Rice v. Williams'[9] holds that the receiver of private letters has not such an interest therein that they can be made the subject of a sale without the owner's consent.[10] So it would seem there is authority for a ruling either way on this question.

The court decided that in the absence of some special limitations imposed either by the subject-matter of the letter,[11] or the circumstances under which it is sent,[12] the right of the recipient is one of unqualified title in the material on which it is written. From this it follows that he can sell it to another. His ownership in the letter is absolute, subject to the author's paramount rights of publication. The court, therefore, refused the injunction as to a sale of the letters, there being present none of the special circumstances referred to.

It would seem that the conclusion reached in the principal case is correct in principle. Upon the sending of the letter the writer retains property in the ideas expressed therein, but passes on to the recipient property in the paper. The inability of the recipient to publish the letter does not put any limit on his property in the paper, nor does a sale of the letter infringe the right of property in the author in his ideas; for that property in the ideas, it is believed, was never intended to do more than protect the author from unauthorized publication. It cannot mean that the author and the recipient alone are entitled to a knowledge of the ideas expressed in the letter. A common law copyright is infringed only by publication; yet even in the absence of publication the ideas might be transferred from one to another. If this be the extent of the author's property in his ideas, a mere sale of the letters would not constitute an infringement of it.

P. V. R. M.

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[7] 11 C. B. N. S. 139 (1861).

[8] 2 Bush, 480 (Ky. 1867).

[9] 32 Fed. 437 (1887).

[10] Here there was a contract for the sale of sixty thousand letters written to the vendors of a voltaic belt to a physician. The case was also decided on the ground that the contract was void as against good morals. It was, therefore, really not necessary to decide that a recipient cannot sell a letter without the owner's consent.

[11] Letters of extreme affection and other fiduciary communications are cited by the court as examples of this.

[12] Such as a confidential relation existing between the parties, out of which would arise an implied prohibition against any use of the letters.